

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

SHIRLEY MACK,	:	
Plaintiff,	:	Case No. 3:12cv00115
vs.	:	District Judge Thomas M. Rose
CAROLYN W. COLVIN, Acting Commissioner of the Social Security Administration,	:	Chief Magistrate Judge Sharon L. Ovington
Defendant.	:	

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**REPORT AND RECOMMENDATIONS<sup>1</sup>**

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This case is before the Court upon the Motion For Authorization Of Attorney Fees filed by Plaintiff's attorney (Doc. #18) and the record as a whole. The Commissioner has not filed a Memorandum in Opposition, and Plaintiff reports that the Commissioner does not object to the reasonableness of the fee request. *Id.*, PageID at 121.

The Motion seeks an award of attorney fees under 42 U.S.C. §406(b)(1) in the total amount of \$22,000.00. (Doc. #18, PageID at 126). In the absence of opposition by the Commissioner, the Motion and supporting Exhibits establish that an award of attorney fees is warranted under 42 U.S.C. §406(b)(1) in the amount the Motion seeks.

Plaintiff's counsel notes that two past awards of attorney fees under the Equal Access

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<sup>1</sup> Attached hereto is NOTICE to the parties regarding objections to this Report and Recommendations.

to Justice Act (EAJA) occurred in this matter. The first EAJA award under 28 U.S.C. §2412 occurred in May 2006 in the amount of \$3,400.00; the second occurred in November 2013 in the amount of \$3,550.00. (Doc. #17); *see Mack v. Comm'r.*, 3:05cv00063 (Doc. #18). Plaintiff's counsel thus points out that "given the EAJA offset..., Plaintiff will pay out-of-pocket much less than \$22,000.00." (Doc. #18, PageID at 126). This is correct because counsel must offset a total of the previous EAJA awards, \$6,950.00, from the \$22,000.00 presently due him under §406(b)(1). *See Jankovich v. Bowen*, 868 F.2d 867, 871 n.1 (6th Cir. 1989).

Accordingly, the Motion for Allowance of Attorney Fees is well taken.

**IT IS THEREFORE RECOMMENDED THAT:**

1. The Motion For Allowance Of Attorney Fees (Doc. #18) be GRANTED;
2. The Commissioner be directed to pay Plaintiff's attorney fees pursuant to 42 U.S.C. §406(b)(1) in the amount of \$22,000.00;
3. Plaintiff's counsel be directed to reimburse Plaintiff the amount of EAJA fees – \$6,950.00 – previously awarded to counsel; and
4. The case remains terminated on the docket of this Court.

September 4, 2014

s/ Sharon L. Ovington  
Sharon L. Ovington  
United States Magistrate Judge